

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

In re:

Alpha Natural Resources, Inc., et al.,

Debtor

Chapter 11

Case No. 15-33896 (KRH)

Jointly Administered

**OBJECTION TO THE THIRD OMNIBUS MOTION OF THE
DEBTORS FOR AN ORDER (I) AUTHORIZING THEM TO (A) REJECT
CERTAIN UNEXPIRED LEASES OF NONRESIDENTIAL REAL
PROPERTY AND (B) ASSUME CERTAIN UNEXPIRED LEASES OF
NONRESIDENTIAL REAL PROPERTY, (II) EXTENDING THE DEADLINE
TO ASSUME OR REJECT CERTAIN UNEXPIRED LEASES OF NONRESIDENTIAL
REAL PROPERTY AND (III) GRANTING RELATED RELIEF**

Mary Evelyn Amstutz, Anne E. Franklin, Mary Evelyn Amstutz Testamentary Trust, Nancy P. Gettinger, John Paul Organ and Judith Lynn Organ (“the Objectors”), by counsel, file this objection (the “Objection”) to the Debtors’ proposed cure amount required for the assumption of a certain override agreement between Objectors and debtor Alpha Wyoming Land Company, LLC, and seek adequate assurance of future performance for any assignee of the lease in the context of the Debtors’ bankruptcy cases (the “Bankruptcy Cases”). In support of their Objection, the Objectors state as follows:

Augustus C. Epps, Jr., Esquire (VSB No. 13254)
Michael D. Mueller, Esquire (VSB No. 38216)
Jennifer M. McLemore, Esquire (VSB No. 47164)
CHRISTIAN & BARTON, LLP
909 East Main Street, Suite 1200
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Counsel for Objectors

1. The Court has jurisdiction over this core proceeding pursuant to 28 U.S.C. §§ 157 and 1334 and 11 U.S.C. §§ 365 and 503(b), and venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

2. On August 3, 2015 (the “Petition Date”), each Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). The Debtors’ chapter 11 cases have been consolidated for procedural purposes only and are being jointly administered.

3. The Debtors continue to operate their businesses and manage their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

4. The Objectors are the successors in interest to John E. Organ, beneficiary of an override agreement (the “Agreement”) memorialized in a Memorandum of Agreement executed on the 9th day of July, 1974, by and between John E. Organ and Eunice Organ, husband and wife, and Amax, a New York corporation, successor in interest to Ayrshire Collieries Corporation and predecessor in interest to Alpha Wyoming Land Company, LLC, under the terms of which (and under the terms of a Settlement Agreement dated January 18, 1969) the Objectors are to receive payment of royalties through December 31, 2019. The Memorandum of Agreement was recorded in the land records of Campbell County, Wyoming on July 29, 1974 in Book 299 at pane 284.

5. On February 28, 2016, the Debtors served upon the Objectors the Third Omnibus Motion Of The Debtors For An Order (I) Authorizing Them To (A) Reject Certain Unexpired Leases Of Nonresidential Real Property And (B) Assume Certain Unexpired Leases Of Nonresidential Real Property, (II) Extending The Deadline To Assume Or Reject Certain

Unexpired Leases Of Nonresidential Real Property And (III) Granting Related Relief (the "Notices").

6. The Motion proposes the assumption of the Agreement.

7. The Notice proposes a cure amount of \$0.00 required for assumption pursuant to 11 U.S.C., § 365(b). The Objectors object to the Debtors' proposed cure amount of \$0.00.

8. On February 12, 2016, each Objector filed his, her or its proof of claim, which set forth his, her or its proper cure amount (POC Nos. 8244, 8255, 8262, 8273, 8288 and 8357). The correct cure amounts are shown on Exhibit A hereto and on the proofs of claim.

9. Prior to any assumption or assignment of the Agreement, the Debtors are required by 11 U.S.C. § 365(b)(1) to provide adequate assurance (a) that the Debtors will promptly cure all defaults under the Agreement, and (b) of the future performance of a proposed assignee under the terms of the Agreement.

WHEREFORE, the Objectors object and request (a) that assumption of the Agreement be conditioned upon determination and payment of the proper cure amounts to each Objector; (b) that the undisputed amounts of all cures be paid or provided for by the Debtors prior to assumption of the Agreement; (c) that disputed cure amounts be escrowed pending resolution of the dispute; (d) that there be a proper showing of adequate assurance of future performance by the assignee of the Agreement, including any assignee's ability to perform thereunder; and (e) such other and further relief as this Court deems just and proper.

Dated: March 10, 2016

**MARY EVELYN AMSTUTZ, ANNE E.
FRANKLIN, MARY EVELYN AMSTUTZ
TESTAMENTARY TRUST, NANCY P.
GETTINGER, JOHN PAUL ORGAN AND
JUDITH LYNN ORGAN**

By: /s/ Augustus C. Epps, Jr.
Augustus C. Epps, Jr., Esquire (VSB No. 13254)
Michael D. Mueller, Esquire (VSB No. 38216)
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Counsel for the Objectors

CERTIFICATE OF SERVICE

I hereby certify that on March 10, 2016, I caused a copy of the foregoing pleading to be served by email on the Core Parties, 2002 List Parties, the Affected Parties as shown on Exhibit B, and all parties receiving notices in this case through the ECF system.

/s/ Augustus C. Epps, Jr.
Augustus C. Epps, Jr.

Exhibit A

<u>Objection</u>	<u>Cure Amount</u>
Mary Evelyn Amstutz	\$160,622.06
Anne E. Franklin	\$ 98,281.07
Mary Evelyn Amstutz Testamentary Trust	\$160,622.06
Nancy P. Gettinger	\$219,411.43
John Paul Organ	\$ 98,281.07
Judith Lynn Organ	\$ 98,281.07

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Exhibit B

[illegible]

MSU/2002

[illegible]